PUBLIC PROSECUTOR v. RAMACHANDRAN

[A.Cr.J. (Yong J.) November 12, 1973]

[Kuala Lumpur — Selangor Criminal Appeal No. 106 of 1973]

Criminal Law and Procedure — Sentence — Driving motor lorry without due care and attention — Inadequate sentence — Road Traffic Ordinance 1958, s. 36(1).

This was an appeal by the Public Prosecutor against sentence. The respondent had been convicted for driving his lorry without due care and attention, an offence under section 36(1) of the Road Traffic Ordinance, 1958 and had been fined $40.

Held: in the circumstances, the fine imposed was manifestly inadequate and wrong and the sentence must be enhanced to a fine of $250.

Cases referred to:-

(1) *Yong Pak Yong* v. *Public Prosecutor* [1959] M.L.J. 176.

(2) *Abdul Rahman bin Ibrahim* v. *Public Prosecutor* [1938] M.L.J. 219.

(3) *Liow Chow & Anor.* v. *Public Prosecutor* [1939] M.L.J. 170.

(4) *Deputy Public Prosecutor* v. *Isaac Elion* [1949] M.L.J. 160.

(5) *Abu Bakar bin Alif* v. *R.* [1953] M.L.J. 19.

(6) *R.* v. *Ball* 35 Cr. App. Rep. 164.

CRIMINAL APPEAL.

Yaccob bin Ismail (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Yong J.: This is an appeal by the Public Prosecutor against the sentence passed by the magistrate on the ground that it was inadequate.

The accused was convicted for driving his motor lorry without due care and attention, an offence punishable under section 36(1) of the Road Traffic Ordinance 1958 with imprisonment not exceeding six months or with fine not exceeding one thousand dollars. The offence took place at Jalan Pantai Baru, a busy thoroughfare, leading to the Federal Highway and the University of Malaya, Kuala Lumpur. The accused drove his lorry into the back of a car which in consequence was extensively damaged. The magistrate fined him $40. This sentence is manifestly inadequate. This tiny fine will not deter the accused from repeating his offence nor will it deter others from committing it. Such a fine will not serve the public interest.

It is a notorious fact well known to every motorist travelling along Jalan Pantai Baru that lorries there do travel at great speed and frequently are not able to pull up in time to avoid running into the back of the preceding motor vehicle. In assessing sentence I think an appellate court is entitled to take judicial notice of this notorious fact. In *Yong Pak Yong* v. *Public Prosecutor*[1] Good J. said: —

"In dealing with a matter of sentence as distinct from considering whether a person ought to be convicted or not of the offence, I think that the courts are entitled to take judicial notice of what is notorious, of what everybody knows."

The general principles upon which an appellate court will follow in considering the reduction or enhancement of a sentence passed by the courts below are also well known. In *Abdul Rahman bin Ibrahim* v. *Public Prosecutor*[2] it was held that in suitable cases the Court of Appeal will reduce or enhance sentences when, having before them all the material which the trial judge had before him, they consider, having regard to all the circumstances of the case, that the sentence imposed is manifestly excessive or inadequate.

Then again in *Liow Chow & Anor.* v. *Public Prosecutor*[3] the Court of Appeal held that: —

"The sentence of the court of the first instance should not be altered unless the appellate court considers the sentence uniust. An appellate court must reject 'the lore of nicely calculated less or more' in matters of sentence. Before the sentence is altered it must be manifestly wrong, wrong either in the sense of being illegal or of being unsuitable to the proved facts and circumstances.

This court has at the present sitting substituted a sentence of nine months R.I. for a small fine in a case of serious assault; it also reduced a sentence of four years to one of two years because the one sentence was manifestly insufficient and the other manifestly excessive."

Gordon-Smith J. in *Deputy Public Prosecutor* v. *Isaac Elion*[4] said: —

"... before an appellate court interfered with the sentence of a court below, the appellate court had to be satisfied that the sentence must be shown to be wrong either in law or that it is manifestly excessive or inadequate on the facts and circumstances."

In *Abu Bakar bin Alif* v. *R.*[5] Spenser Wilkinson J. quoted with approval the following passage in the judgment in *R.* v. *Ball*: —[6]

"In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it."

Applying the aforesaid principles to the facts and circumstances of the case now before me I am satisfied that the small fine imposed by the learned magistrate is manifestly inadequate and wrong.

I hereby allow the appeal, and enhance the sentence to a fine of $250, in default imprisonment for one month. The accused's driving licence is to be endorsed accordingly.

Appeal allowed.

HII SOO CHIONG v. BOARD OF MANAGEMENT YEE TING PRIMARY SCHOOL

[F.C. (Azmi L.P., Gill and Ali F.JJ.) November 21, 1973]

[Kuching — Federal Court Civil Appeal No. 9 of 1973]

Contract — Building contract — Claim for damages for breach of contract — Decision based on credibility of witnesses — Appellate court should not interfere with finding of trial court.

In this case the respondents had brought an action for breach of a building contract, alleging that inferior materials had been used in construction. The learned trial judge, who heard the witnesses and decided questions of fact based on the credibility of the witnesses, held in favour of the respondents. The appellants appealed.

Held: as in this case the finding of facts by the trial judge were based on the credibility of the witnesses, the appellate court could not interfere with his decision and the appeal must be dismissed.

Case referred to:-

(1) *Tan Chow Soo* v. *Ratna Ammal* [1969] 2 M.L.J. 49.